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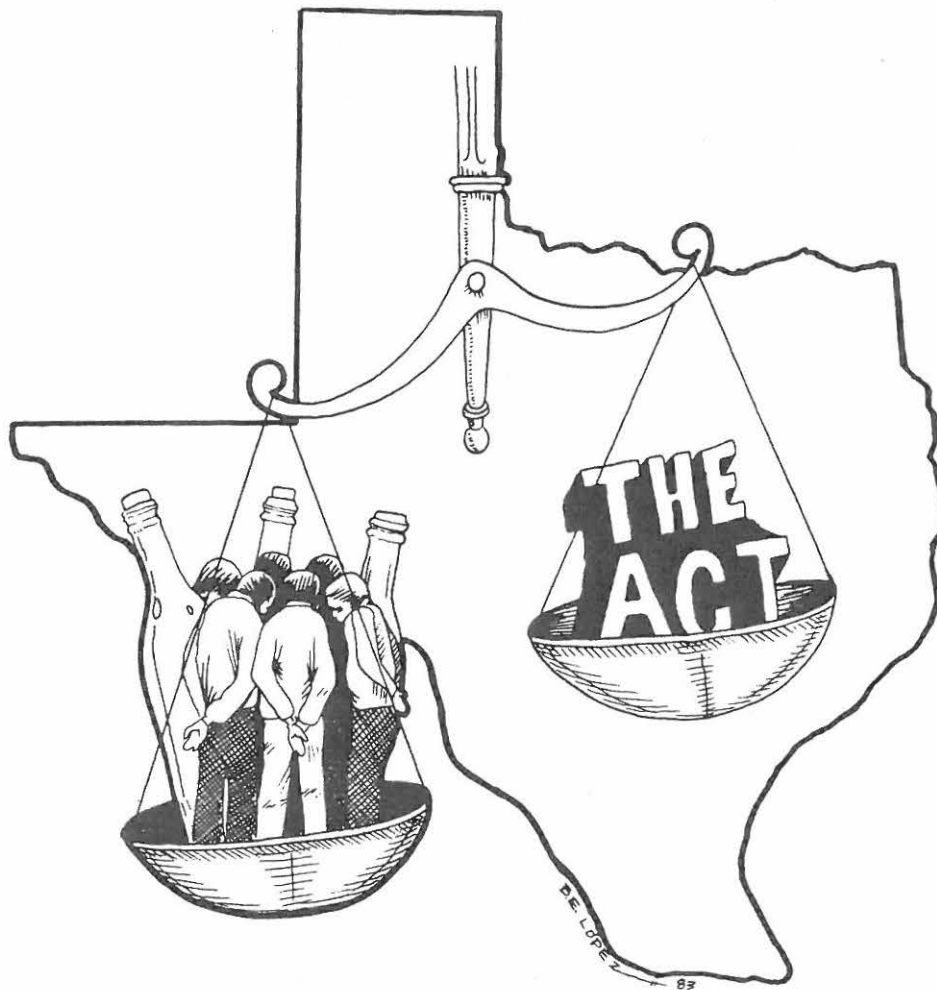
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Recommended Citation

Gerald S. Reamey, A Statutory Sentencing Alternative for Alcohol Related Crimes, 12 Voice for the Def. 12 (1983).

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A Statutory Sentencing Alternative for Alcohol Related Crimes



by Gerald S. Reamey

The recidivism rate for alcohol-related crimes must surely be among the highest for any single class of criminal activity. Drinking problems spawn a wide variety of offenses, and the exposure to arrest and conviction abates only when the source of the problem is eliminated.

One may question whether the criminal defense attorney has any obligation to address a client's personal problem as part of his legal representation. But legal representation certainly includes exploration of options designed to avoid future prosecution.

One such option has lain largely dormant for the past 19 years, despite its obvious

usefulness in avoiding incarceration or fine and preventing recurring legal problems related to alcohol abuse. The reasons for its disuse are several, including its low visibility among the statutes used by criminal defense lawyers. Recent changes in law and practice have, however, removed substantial impediments to its use. Every lawyer representing clients with alcohol-related legal problems should now review this sentencing alternative for possible application to future cases.

The Act

In 1953, the Legislature passed Article 5561c, creating the Texas Commission on Alcoholism.¹ This

enactment was in response to the obvious need for alcohol treatment programs in Texas, especially for the chronic or habitual abuser. Section 12 of the original Act provided what must have seemed to the drafters as an enlightened procedural device enabling judges in misdemeanor cases to remand a defendant to a treatment facility in lieu of imposition of sentencing when the court was satisfied that the defendant has committed the crime as a result of his chronic abuse of alcohol.²

Section 12 was specifically limited to treatment of those who had committed the crime as a result of the "chronic and habitual

defendant could not be feeble-minded or psychotic, and must not have, in the opinion of the judge, exhibited "definite criminal tendencies."⁴

A defendant could not be remanded for more than 90 days treatment and the Act only applied to those over 18 years of age.⁵ Despite these limitations, the potential of the statute was obvious and quite broad. As written, it invited misdemeanor judges to remand those before them with drinking problems to a treatment facility rather than to the municipal or county jail. For a number of reasons, this invitation was not accepted.

The paramount problem has probably been that the statute authorizing this sentencing alternative is hidden in a civil enactment creating a state commission. It is hardly the place even the most diligent defense attorney would first turn.

A second and significant problem was the limitation that the treatment must be in "special facilities" available for the treatment of alcohol problems.⁶ Since the defendant was to be remanded to the Commission or its authorized representative, the treatment facility, only those facilities operated by the state were likely candidates under the ambiguous statutory language.

The obvious problem caused by limiting the number of authorized facilities is that such facilities were too few to provide a readily available and inexpensive alternative to misdemeanor punishment. The treatment was less attractive to the defendant than the quick and relatively painless punishment for even habitual violation of misdemeanor statutes. Much of this disincentive was caused by the inconvenience of the hospitals and the time required to participate in a treatment program. If the defendant were hospitalized, the interference with living arrangements and earning a living was substantial. Moreover, the cost of treatment would often exceed the possible fine, making the alternative sen-

even impossible.

With these practical concerns to overcome, few defendants ever attempted to convince the court that treatment was preferable to punishment. Assuming the defendant wanted treatment, misdemeanor probation or deferred adjudication undoubtedly appeared more attractive to many for whom it was available than pleading guilty to receive inconvenient and expensive treatment in a state hospital. Some may have simply preferred private treatment facilities.

All of these factors conspired to prevent the widespread use of Article 5561c by the defense bar. On those occasions when the statutory and practical limitations did not dissuade use of the Act, defendants were probably never informed that they might receive medical care rather than a fine or jail time.

In 1977, the Legislature amended Section 12 of Article 5561c, clarifying the availability of the remedy to municipal courts and permitting the remand to "a treatment facility approved by the Commission for alcoholic detoxification or treatment purposes."⁷ As insignificant as these changes seem, they have combined with changing circumstances in the law and agency practice to revive the potential of the Act.

The problem of facility availability under the original Act has been largely solved, and its resolution is reflected, in part, by the amended language of the Act. It is not now necessary that the Commission or its authorized representative receive the defendant for treatment; he may be received by any treatment facility approved by the Commission.⁸

This approval is part and parcel of the licensing of private alcohol treatment facilities made possible in 1977 by passage of Article 5561c.⁹ Although this licensing is not mandatory, hospitals are apparently taking advantage of the opportunity to be so approved. One may suppose that an increase in the number of patients admitted

would add further incentive to become licensed.

Eight private facilities are licensed or will be licensed within the near future and several other applications are now being processed by the Commission.¹⁰ Each of these licensed facilities is one "approved by the Commission" for purposes of Article 5561c,¹¹ and the geographic dispersion of these hospitals, added to the available state hospitals, should soon resolve a major difficulty in implementation of the original Act.

The cost problem is also less burdensome than in the past. Some state and private hospitals will accept patients without cost. For others, medical insurance, Medicare and Medicaid will provide funds to cover the expenses. Since the Act does not require that patients be committed to hospitalization for defined periods, outpatient treatment is possible, permitting defendants to maintain their home lives and jobs.

Admittedly, limitations remain that discourage use of this sentencing alternative. For example, the statute applies only to misdemeanors,¹² crimes often resulting in probation, deferred adjudication or low fines without incarceration.

DWI or public intoxication offenders might, however, be well served by obtaining treatment rather than even relatively slight punishment. Money spent by defendants on treatment would at least inure to the benefit of the defendant in a way a fine could not. And this alternative may become especially important if the penalties for alcohol-related crimes increase and the prerequisites for probation or deferred adjudication become more restrictive.

There is also a limitation on the age of the defendants eligible for this disposition.¹³ Despite the growing awareness of the alcohol problem among young offenders, the Act is unavailable to those 18 years of age or younger. In its Interim Report, the Subcommittee

on Alcohol Addiction and Drug Abuse Among Youth of the Committee on Health Services of the Texas House of Representatives recommended amendment of Section 12 to provide for court commitment of persons eighteen and under.¹⁴ The proposed amendment would also permit persons eighteen and under to obtain treatment without parental consent, removing an obstacle to such treatment for many and bringing alcohol treatment in line with drug abuse treatment under Article 4447i.¹⁵

The availability of facilities, the obvious advantages of treatment over punishment, and the wide scope of offenses related to alcohol abuse make the treatment option very attractive for many defendants. Obtaining this disposition from the court is also relatively straightforward if defense counsel has prepared properly.

Obtaining Relief Under the Act

The implementation of the remand provisions of the Act are discretionary with the judge finding the defendant guilty.¹⁶ The defendant wishing to avail himself of this option should, therefore, file a written motion for remand to a treatment facility in lieu of imposition of fine or sentence. A form motion for this purpose is set forth below, incorporating the requisite allegations under the Act.

It should be noted that the person applying for relief must not have demonstrated criminal tendencies. A broad reading of this provision is that the person, although he may have a criminal history, has committed whatever offenses for which convicted because of his chronic use of alcohol. The correlation between alcohol and the defendant's criminal behavior is not specified in the statute; it is within the discretion of the sentencing judge,¹⁷ and ought to be explained in the defendant's motion.

Also within the discretion of the judge is the finding that the

defendant is not severely mentally ill or psychotic.¹⁸ If the defendant does suffer from such an infirmity, commitment for alcohol treatment is clearly inappropriate in any case.

The defendant should contact the facility at which he desires treatment to insure that the facility is approved by the Commission and willing to accept him as a patient.¹⁹ This written acceptance from the hospital may be attached to the written motion filed with the court, or written approval of the facility by the Commission may be attached.²⁰

A sample judgment and Writ of Commitment is also set forth below which contains the required findings by the trial court and an order respecting transportation of the defendant to the facility.²¹ If the defendant is being held in jail at the time of the commitment, a letter should be drafted for the judge's signature directing the jail to release the prisoner to the custody of the person transporting the defendant to the hospital.

Conclusion

Any sentencing alternative offering, as this one does, an opportunity to afford the client assistance that may prevent future prosecutions is an important part of the defense arsenal. The law is in place and now provides a workable sentencing alternative for many clients. There is no reason for this useful provision to continue to lie dormant.

FOOTNOTES

1. TEX. REV. CIV. STAT. ANN. art. 5561c (Vernon 1953).
2. TEX. REV. CIV. STAT. ANN. art. 5561c, §12 (Vernon 1953).
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. TEX. REV. CIV. STAT. ANN. art. 5561c, §12 (Vernon 1977).
8. *Id.*
9. TEX. REV. CIV. STAT. ANN. art. 5561cc (Vernon 1977).
10. A representative of the Commission, Lucille Gray, has indicated that ap-

publication of approval in the *Texas Register* for completion of the licensing procedure. Ms. Gray further indicated that as of the time of the writing of this article, four or five other license applications were pending.

11. Facilities approved for licensing are listed in the *Texas Register* when licenses are granted. Counsel wishing the latest information on licensed facilities should be able to readily obtain such data from the Texas Commission on Alcoholism. It is unclear whether the Commission would approve a facility for Article 5561c purposes unless that facility had also obtained a license under 5561cc, but it is unlikely that such approval would be granted on an *ad hoc* basis. (For information on approved facilities, contact Judy Van Hillyer at TCA. —Editor, *The Magazine*)
12. TEX. REV. CIV. STAT. ANN. art. 5561c, §12 (Vernon 1977). For more serious crimes involving drinking, it may be possible to use the remand procedures of 5561c to persuade the State to reduce a felony to misdemeanor status if the defendant will enter a bona fide treatment program.
13. *Id.*
14. TEX. HOUSE SUBCOMM. ON ALCOHOL ADDICTION AND DRUG ABUSE AMONG YOUTH, INTERIM REP. 19 (1982).
15. *Id.*
16. TEX. REV. CIV. STAT. ANN. art. 5561c, §12 (1977).
17. *Id.*
18. *Id.*
19. *Id.*
20. The Act actually reads that the court have "notice from the Commission that such facility will receive such person as a patient." *Id.* A broad reading of this language suggests that acceptance of the patient by the approved facility would constitute the kind of approval required. Such written acceptance would clearly indicate that the "special facilities" were available. Should the court require further notification directly from the Commission that the facility will receive the patient, such notice may surely be obtained without difficulty. Actually, the "notice from the commission" language makes sense only in the context of the original Act, and has probably been rendered virtually useless by the licensing procedure.

mitment set forth was graciously supplied by Dallas County Criminal Court Judge Chuck Miller, and is a form used in Judge Miller's court. Judge Miller requires no written motion from defendants applying under Article 5561c. (Judge Miller is now an Associate Justice of the Texas Court of Criminal Appeals.)

No. _____

THE STATE OF TEXAS
VS.
JOHN DOE
IN THE COUNTY (MUNICIPAL,
JUSTICE) COURT
OF

_____ COUNTY, TEXAS.
DEFENDANT'S MOTION TO REMAND
FOR ALCOHOL TREATMENT IN LIEU
OF IMPOSITION OF SENTENCE
OR FINE
TO THE HONORABLE JUDGE OF SAID
COURT:

COMES NOW, JOHN DOE, Defendant
in the above styled and numbered cause by
and through his attorney of record and
moves the Court to remand Defendant to
the Texas Commission on Alcoholism, its
authorized representative, or a treatment
facility approved by the Commission for
alcoholic detoxification or treatment pur-
poses for a period not to exceed ninety
days in lieu of imposition of a sentence or
fine under the provisions of Article 5561c,
Section 12, of the Texas Revised Civil
Statutes. In support of this motion, Defen-
dant would show the Court as follows:

I.

Defendant has (pled guilty to) (been
found guilty of) a misdemeanor offense
resulting from Defendant's chronic and
habitual use of alcohol.

II.

Defendant is over the age of eighteen
years of age and has not exhibited definite
criminal tendencies. (Defendant has no
prior criminal record.) (Defendant's prior
record is attributable to Defendant's
chronic use of alcohol as evidenced by the
attached criminal history marked Exhibit
— and incorporated herein for all pur-
poses.)

III.

Defendant is not feeble-minded or
psychotic. Defendant's behavior is solely
the result of the chronic and habitual use
of alcohol for which Defendant seeks treat-
ment.

IV.

Special facilities are available for treat-
ment of Defendant and Defendant will be
received as a patient at _____
which facility is approved by the Texas
Commission on Alcoholism as shown in
the letter from the Commission attached as
Exhibit _____ and incorporated herein
for all purposes.

Remanding Defendant to an alcohol
treatment facility in lieu of incarceration
or imposition of a fine would better serve
the rehabilitative needs of the Defendant
for the following reasons: _____

VI.

WHEREFORE, premises considered,
the Defendant prays that the Court remand
Defendant to _____, an alcohol
treatment facility approved by the Texas
Commission on Alcoholism for care and
treatment for a period not to exceed ninety
days in lieu of the imposition of a sentence
or fine under the provisions of Article
5561c, Section 12, Texas Revised Civil
Statutes.

Respectfully submitted,

ATTORNEY FOR
DEFENDANT

No. _____

THE STATE OF TEXAS
V.
IN THE COUNTY (MUNICIPAL,
JUSTICE) COURT
OF
_____ COUNTY, TEXAS
JUDGMENT

On the _____ day of _____, AD.
19____, this cause being called for trial, and
the State appeared by her Criminal District
Attorney, and the Defendant, _____
_____, appeared in person, his counsel
also being present, and both parties an-
nouncing ready for trial, and the said
Defendant is open Court was duly
arraigned and in person pleaded _____ to
the charge contained in the Information, to
wit:

*Driving a motor vehicle upon a public
road while intoxicated*, as charged in the In-
formation,

And the Court having found the Defendant
guilty, and determining that no sentence be
rendered thereon, and that good cause
exists for the Defendant to be committed to
_____ for a period not to exceed Ninety
(90) days for care and treatment of
alcoholism and or alcoholic detoxification.

The Court further finds that the crime
of which the Defendant was found guilty
and the Defendant's criminal conduct was
the result of his chronic use of alcohol and
intoxicating beverages.

Pursuant to the above, therefore, the
Defendant is remanded to _____
pursuant to Article 5561c, Section 12, Ver-
non's Annotated Texas Statutes as amended
June 15th, 1977, for care and treatment of
alcoholism and or alcoholic detoxification
for a period of _____ days.

IT IS FURTHER THE OPINION OF
THE COURT that the Defendant has not
exhibited criminal tendencies and is not
feeble-minded or psychotic.

IT IS FURTHER ORDERED, AD-
JUDGED AND DECREED that _____, a
relative to Patient and/or a responsible per-
son having the proper person to transport
Patient to the above designated hospital

dered and directed to issued a Writ of
Commitment in duplicate to said party
authorizing and commanding said party to
take charge of Patient and to transport
Patient to the above designated hospital.

IT IS FURTHER ORDERED that the
Clerk of this Court issue a Writ of Com-
mitment in duplicate to the Transporting
Agent of this County authorizing and com-
manding said Transporting Agent to take
charge of Patient and to transport Patient
to the above designated hospital.

The head of the above named hospital,
upon receiving a copy of the Writ of Com-
mitment and admitting Patient, shall give
the person transporting Patient a written
statement acknowledging acceptance of
Patient and of any personal property
belonging to Patient and shall file a copy
with the Clerk of this Court.

_____ JUDGE

No. _____
THE STATE OF TEXAS
V.

IN THE COUNTY (MUNICIPAL,
JUSTICE) COURT
OF
_____ COUNTY, TEXAS
WRIT OF COMMITMENT

TO _____
(NAME OF PERSON TRANS-
PORTING PATIENT)

WHEREAS by order dated on the _____
day of _____, 19____, in the above entitled cause,
_____, hereinafter called Defendant
was committed to the _____ for care and
treatment of alcoholism and/or alcoholic
detoxification for a period of _____ days, said
order further authorizing and commanding
you to take charge of said Patient to _____:

THEREFORE, YOU ARE HEREBY
AUTHORIZED AND COMMANDED to
take charge of Patient to the above men-
tioned hospital. You are further directed to
deliver a copy of this Writ of Commitment
and the Patient to the head of the said
above-named hospital and receive from the
head of said hospital a written statement
acknowledging receipt of the Patient and of
any personal property belonging to Patient,
and said written statement shall be filed
with the Clerk of this Court in the papers
of said cause.

GIVEN UNDER MY HAND AND
SEAL OF OFFICE this the _____ day of
_____, 19____

_____ COUNTY CLERK

BY _____ DEPUTY
ACCEPTANCE OF PATIENT

On this the _____ day of _____, 19____, the
Patient described in the above Writ of
Commitment was delivered to and accep-
ted by me as head of the hospital named in
said commitment, together with the
following personal property, if any,
belonging to said Patient: _____

Dated this the _____ day of _____, 19____